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Summaries of
Decisions
Volume 7
(1983)

Liquor Licence Appeal Tribunal



Ontario

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LIQUOR LICENCE APPEAL TRIBUNAL

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Vice-Chairman: Lachlan Cattanach, Q.C.

Members: Barbara J. Shand
Gale McAuley
Kenneth P. Van Hamme
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Summaries of Decisions

Volume 7 (1983)



LIQUOR LICENCE APPEAL TRIBUNAL
SUMMARIES OF DECISIONS * - VOLUME 7
CITED 7 L.L.A.T.

* This volume contains summaries of, and in some instances full decisions and reasons given. If reference to the exact decision is desired application should be made to the Registrar.

LIQUOR LICENCE APPEAL TRIBUNAL

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ANGELO ANTONANGELI
(LICENSEE OF ROYAL SIMCOE LODGE TAVERN)

APPEAL FROM THE DECISION OF THE
LIQUOR LICENCE BOARD OF ONTARIO

TO ATTACH A TERM AND CONDITION TO THE
DINING LOUNGE AND PATIO (DINING LOUNGE) LICENCE

TRIBUNAL: LACHLAN CATTANACH, Q.C., VICE-CHAIRMAN AS CHAIRMAN
BARBARA SHAND, MEMBER
KENNETH VAN HAMME, MEMBER

COUNSEL: DANIEL MONTEITH, representing the Appellant
S.A. GRANNUM, representing the Respondent

DATE OF
HEARING: 1st June, 1983

ADJOURNMENT

UPON an application by counsel for the Appellant for an adjournment,

BY VIRTUE OF THE AUTHORITY vested in it under section 14(3) of the Liquor Licence Act, the Liquor Licence Appeal Tribunal hereby adjourns the hearing sine die to be brought back on, if necessary, by either party on ten days' notice subject to the following terms and conditions:

1. An application for transfer approval shall be forthwith made by Angelo Antonangeli to the Liquor Licence Board to approve the transfer of licence to 411523 Ontario Limited.
2. The licensee or transferee shall forthwith file with the Board statements of receipts from food and liquor sales in the premises for the month of April 1983 and continue to file statements of monthly sales within 15 days of the end of each month.
3. The licensee or transferee of licence as the case may be shall, upon request by an investigator of the Board, supply the

investigator with books and records for his inspection and copying if necessary, for the months of April and May 1983 and subsequent months as required.

4. All amplifiers are to be removed from the patio forthwith.
5. Sufficient staff shall be employed at all times to retain proper control.

BIDWELL INVESTMENTS LIMITED
(LICENSEE OF PRESIDENT MOTOR HOTEL)

APPEAL FROM THE DECISION OF THE LIQUOR LICENCE BOARD
TO SUSPEND THE LOUNGE LICENCE ISSUED FOR THE PREMISES
IN THE PRESIDENT MOTOR HOTEL KNOWN AS "LACEY'S LOUNGE"

TRIBUNAL: LACHLAN CATTANACH, Q.C., VICE-CHAIRMAN AS CHAIRMAN
GALE McAULEY, MEMBER
KENNETH VAN HAMME, MEMBER

COUNSEL: PATRICK J. CULL, Q.C., representing the Licensee
S.A. GRANNUM, representing the Liquor Licence Board

DATE OF
HEARING: 14th June, 1983

REASONS FOR DECISION AND ORDER

This is an appeal by the Licensee from the Order of the Liquor Licence Board of Ontario dated the 8th day of March, 1983, suspending the lounge licence for the premises in the President Motor Hotel situate at 99 Elm Street West, Sudbury, Ontario known as "Lacey's Lounge" for a period of eight days.

The Licensee is the holder of dining lounge and lounge licences No. 010996, originally granted in January of 1964, and the present shareholders acquired the shares of the Licensee Corporation in November of 1980. The premises licenced as a dining lounge consists of seven areas, four of which are located in the basement of the establishment with capacities of 94, 14, 109 and 35 persons respectively, and three of which are located on the main floor with capacities of 33, 90 and 25 persons, respectively. The premises licenced as a lounge consist of two areas, one of which is in the basement with a capacity of 342 persons, and the other known as Lacey's Lounge on the main floor with a capacity of 228 persons.

On the 3rd day of February, 1983, the Liquor Licence Board issued a Notice of Proposal "to suspend for a period of fourteen (14) days the liquor licence(s)" for the said establishment. A hearing was requested by the Licensee and, as a result of that hearing, the Board issued its Suspension Order above referred to.

Counsel for the Licensee made a preliminary objection that the Order of the Liquor Licence Board is invalid in that the hearing required by Section 11 of the Liquor Licence Act was held by the Chairman of the Board and one member and not referred to two or more members of the Board designated by the Chairman as required by Section 12(1) of the Act. Section 12(1) reads as follows:

"Where the Board is required to hold a hearing under Section 11, the Chairman of the Board shall refer the application to two or more members of the Board designated by the Chairman, who shall constitute the Board for the purposes of the hearing and decision."

The hearing before the Board was conducted by Willis L. Blair, Chairman of the Liquor Licence Board of Ontario and Mrs. M.N. Saunderson, a member of the Board.

Mr. Cull, on behalf of the Licensee, argued that as the hearing was conducted by the Chairman and one member, and not by two members as provided by Section 12(1) of the Act, the Board was improperly constituted. He stated that it was obvious that the Chairman cannot sit as a member of the Board and, since the Board is an administrative tribunal, it only has the specific authority given to it by statute. He further submitted that if the Board is not formed properly, it loses jurisdiction and any Order of the Board is null and void. Mr. Cull referred to the case of Re City of Chatham and Fife et al, 9 P.M.B.R., page 393, where a hearing by a Court of Revision with respect to a special assessment for a local improvement under the provisions of the Local Improvement Act, R.S.O. 1970, c. 255, was held before two members of the Court of Revision while Section 43(1) of the Act provides that the Court of Revision shall consist of three or five members appointed by the Municipal Council. In this case, the Ontario Court of Appeal held that the Court of Revision did not have jurisdiction and that this tainted all subsequent proceedings. The original Order was set aside and no further Order was made. Counsel for the Licensee acknowledged that the Chairman is a member of the Liquor Licence Board, but that the word "refer" implies that the application for a hearing must be held by two or more members of the Board designated by the Chairman other than the Chairman.

Counsel for the Board argued that the Chairman of the Liquor Licence Board under the provisions of Section 12(1) can designate himself as one of the members to hear the application. He referred to the provisions of Section 2 of the Act which provides that the Liquor Licence Board is continued and shall consist of not more than seven members appointed by the Lieutenant Governor in Council and that the Lieutenant Governor in Council may designate one of the members of the Board as Chairman and one or more of the members as Vice-Chairman. He further argued that the hearing before this Tribunal is a hearing "de novo" under the provisions of Section 14(3) of the Liquor Licence Act which gives the Tribunal the authority to substitute its opinion for that of the Board.

The Tribunal is not prepared to give effect to the preliminary objection of the Licensee on this point and finds that the Liquor Licence Board was properly constituted for the purposes of the hearing in this matter. Section 12 of the Act requires the Chairman to refer the application to two or more members of the Board, designated by the Chairman, and does not specifically exclude the Chairman from being a member for the purposes of the hearing and decision. If it had been the intention of the Legislature to exclude the Chairman from sitting as a member, it could have used some specific words of exclusion such as the word "other". Section 2(5) of the Act provides that the Chairman shall be the chief executive officer of the Board and shall devote his full time to the work of the Board. The Tribunal is of the opinion that this includes within his duties the responsibility of sitting as a member of the Board on hearings under the provisions of Section 11 of the Act. The Tribunal finds that the case of re City of Chatham and Fife et al is not applicable in this matter since it dealt with the problem of a specific lack of quorum as required by the Local Improvement Act. The Tribunal therefore rules that the Liquor Licence Board was properly constituted for the purposes of the hearing in this matter.

Mr. Grannum called as a witness Patrick Mills, a Sergeant with the Sudbury Regional Police Force who gave evidence that he attended at the President Motor Hotel at approximately 12:40 a.m., in the early morning of December 11, 1982, with three other officers to check the premises known as "Lacey's Lounge". Sergeant Mills stated that there was no doorman on duty at any of the four entrances to the lounge and that when Sergeant Mills entered the lounge, three persons in the lounge attempted to leave and were stopped by other officers at the door. These persons, Jo Anne Steed, age 16, Paulene Richer, age 17, and Joe Bratanich, age 18, were all charged and subsequently convicted under the provisions of Section 44(5) of the Liquor Licence Act.

On cross-examination, Sergeant Mills stated that he came up the stairs at the southwest corner of the lounge from the parking lot area and walked through the lounge towards the two uniformed officers standing at the lobby door who had stopped the three accused persons. He was not in uniform at the time. Sergeant Mills had no recollection as to their appearance and did not observe whether the minors were being served or even sitting at a table. Sergeant Mills confirmed that he had no discussion with any of the hotel staff during this incident.

Mr. Lacey Cull was called as a witness on behalf of the Licensee and confirmed that he was the Manager of the President Hotel. He stated that he was not present on December 11, 1982 and that he knew nothing of the incident until he read it in the paper on Monday. Mr. Cull stated that there were four entrances to Lacey's Lounge, consisting of three main entrances on the north side, a southwest entrance leading to the parking lot and a southeast entrance leading into the main lobby. He stated that all four entrances were necessary for the operation of the lounge. Mr. Cull stated that on Friday nights the current procedure was to have five security people watching the bars, together with one rover. He stated that it was their policy to hire off-duty police officers in uniform on many occasions. Mr. Cull stated that on December 11, 1982, Mr. Bill Bailie, who was a second bartender and security officer, was on duty at Lacey's and that his normal routine is to assist the waiters and to walk from door to door (around the four doors). He was there to solve any problems and if a waiter or waitress has a problem he was to be called. He stated that it was the policy of the hotel to have a continuous scrutiny so that no minors are served. He stated that age of majority cards are required and that if a member of the staff serves a minor, they are dismissed.

Mr. Grannum, on cross-examination suggested to Mr. Cull that a lounge with a capacity of 228 persons was too large for one security officer and that the security was not sufficient. Mr. Cull stated that Lacey's served an older type of patron and that there had been no problems previous or subsequent to this incident.

Cindy Louise Ragauskas gave evidence on behalf of the Licensee. She was employed as a waitress since August of 1982. She stated that all members of the staff were given instructions as to minors and were advised to check identification cards and accept age of majority cards only. If

the person had no cards, they were asked to leave immediately. She stated that she was on duty on December 11, 1982 and asked two girls for their identification. When this could not be produced, she asked them to leave but she did not escort them out because they stated that they would leave. She had never seen these girls before and stated that they were standing by the dance floor when she approached them to produce their identification. On cross-examination, she stated that the two girls were asked to leave because they appeared to be under the age of 19 years.

William C. Bailie, a security officer at the President Motor Hotel, was called and testified that he had been an employee in that capacity for about one and one-half years. He stated that his duties were to watch the doors at the four entrances at Lacey's and to assist the waitresses where necessary. In addition to checking the four doors, he had the responsibility of the back hallway. He stated that on December 11th, he had heard that there were underaged people in the lounge and saw two girls talking to two police officers in the lobby. When he approached them to ask if there was a problem, he stated that he was told it was none of his business. Mr. Bailie confirmed that there had been no change in the procedure since the December 11, 1982, incident and that there were very seldom any incidents in Lacey's.

Mr. Grannum recalled Sergeant Mills to give evidence in reply with respect to two incidents which reportedly occurred on December 7th, 1982 and January 7, 1983. Counsel for the Licensee objected to the introduction of this evidence and argued that this was not evidence in reply since there had been no previous reference to these incidents in any of the prior proceedings. The Tribunal accepts the position of counsel for the Licensee and takes no cognizance of the reply evidence given by Sergeant Mills.

Counsel for the Board in argument stated that the matter in issue before the Tribunal is the question of the breach of Section 8(6)(a) of the Regulations to the Liquor Licence Act which provides as follows:

"The holder of the licence shall ensure that evidence as to the age of the person, satisfactory to the licence holder, is obtained: (a) prior to permitting a person apparently under the age of 19 years entry to premises not prescribed by Section 51;"

He stated that there was evidence that there was no person on duty on the 11th of December, 1982, at the doors to the lounge checking identification. Three persons who were in the lounge were subsequently charged and convicted. Counsel submitted that one security officer for four entrances is not sufficient to ensure compliance with the Regulations. He referred to an unreported decision of the Divisional Court of R. v. Kazia where there was a conviction under the offence of supplying liquor to a minor. The Court held that if authority is given to a doorman to check the age of all patrons and he fails to check, this negligence is imputed to the Licensee. Counsel submitted that Mr. Bailie might not be at fault but that the Regulations had been breached and that it was up to the Licensee to create a proper security system.

Counsel for the Licensee reviewed the statutory provisions of the Board and its power to revoke a licence. He referred the Tribunal to Section 10(3) of the Act which reads as follows:

"Subject to Section 11, the Board may refuse to renew or may suspend or revoke a licence issued under Section 6 for any reason that would disentitle the Licensee to a licence under Section 6 if he were an applicant or where the Licensee is in breach of a term or condition of the licence."

He suggested that this does not give the right to revoke a licence where there is a single incident and stressed the use of the word "is" in the last line of the subsection. He stated that in order for the Board to be entitled to revoke a licence, there must be a breach at this time and that Regulations 8(6)(a) is consistent with the word "is". Counsel argued that there is no right in the Board to rescind a licence for one incident but that the Board must show there to have been a course of conduct. He argued that the power to suspend is a very powerful penalty and that Regulation 8(6)(a) does not specify specific standards. He acknowledged that it may be in some circumstances that there should be a security officer on every door but that this would not be a reasonable course of conduct in many circumstances and that the Legislature could have been more specific if it so required. He also drew the attention of the Tribunal to the use of the word "permitting" in Regulation 8(6)(a) and suggested that the licensee must be conscious of something going on. He referred to the use of the word "apparently" in the Sections and argued that you cannot

assume a breach because of a conviction. Counsel reviewed the precautions taken by the Licensee and argued that the Licensee could only be guilty if the Tribunal is to find that a security man should be on every door at all times.

Counsel for the Board in reply argued that in the Westminster Hotel appeal before the Divisional Court 330. R (2nd) 312 it was held that one incident of a breach of the Regulations is sufficient to create "past conduct". He also argued that the use of the word "permits" in the Section includes the situation where a Licensee is either wilfully blind or is careless in carrying out its statutory duties.

The Tribunal is of the opinion that there is sufficient evidence before it to find that the Licensee was in breach of the Regulations, specifically Regulation 8(6)(a) of the Liquor Licence Act. In the opinion of the Tribunal, one supervisor is not sufficient for Lacey's Lounge regardless of the number of people. We have the uncontroverted evidence of the police officers that at the time of their entry into the lounge, there were no security persons on duty at any doors. If the only evidence before the Tribunal had been the evidence with respect to the two girls who were apprehended and subsequently charged and convicted, the Licensee might be entitled to the benefit of the doubt. However, there was a third person, Joe Bratanich, who was also charged and convicted and there was no evidence that he had been asked to leave.

The Tribunal hereby confirms the decision of the Liquor Licence Board dated the 8th day of March, 1983, and directs the Board to set the date of the commencement and termination of the said period of suspension.

PAUL J. CIAVARELLA
 PHILIP MANCINI
 AIDAN TUITE
 (LICENSEES OF BOILER'S RESTAURANT)

APPEAL FROM THE DECISION OF THE
 LIQUOR LICENCE BOARD OF ONTARIO

TO ATTACH A TERM AND CONDITION TO
 THE DINING LOUNGE LICENCE

TRIBUNAL: LACHLAN CATTANACH, Q.C, VICE-CHAIRMAN AS CHAIRMAN
 BARBARA SHAND, MEMBER
 KENNETH VAN HAMME, MEMBER

COUNSEL: JOSEPH AGOSTINO, representing the Appellants

S.A. GRANNUM, representing the Respondent

DATE OF
 HEARING: 3rd March, 1983

REASONS FOR DECISION AND ORDER

This is an appeal by Paul J. Ciavarella, Philip Mancini and Aidan Tuite, the licensees of Boiler's Restaurant in Stoney Creek, Ontario, from the Order of the Liquor Licence Board of Ontario dated the 28th day of October, 1982, wherein the Board imposed a term and condition to the dining lounge licence whereby the sale and service of alcoholic beverages would cease at 10:00 p.m. daily.

At the hearing before the Tribunal, the Board's investigators introduced into evidence the results of their investigations on April 7, August 25, August 26, August 27, September 9 and September 10, 1982, which substantially confirmed the evidence in Exhibit #6 being the record of proceedings before the Liquor Licence Board which indicated that during the period between January of 1982 and August of 1982, total liquor sales in the establishment ranged between 72 per cent and 80 per cent of the total combined liquor and food sales which was in contravention of Section 9, Subsection (6) of Regulation No. 581/80 under the Liquor Licence Act, 1980. The evidence of the investigators was that the restaurant was bright and clean and very well decorated. Menus were presented to patrons prior to 9:00 p.m., but after that time the tables were cleared and menus were presented only on request. It

appears that the new kitchen facilities were more than adequate and contained new commercial type equipment. There was always an adequate staff and an adequate supply of food, but the patrons after 9:00 p.m. were of a younger age and there was rarely evidence of any food being served.

Further investigation revealed that there was no daily sales journal kept as required by the Act. Weekly sales sheets were made available to the investigators for the months from January to August of 1982, inclusive, but the sales sheets were vastly different from the sheets which were submitted by the Licensee to the Liquor Licence Board. For example, the sale of liquor in January of 1982 as reported on the sales sheets was \$17,415.17 while the actual liquor sales for that month were \$68,205.09. The food sales reported on the weekly sales sheets for the month of January were \$11,461.67 while the actual food sales for that month as submitted to the Board were \$17,307.06. The explanation given to the investigators for these substantial discrepancies was that there were two cash registers, one located at the bar and one in the kitchen. All sales by the bartender, both for food and liquor, went through the cash register at the bar while sales through the kitchen went through the kitchen cash register. The licensees had only been reporting the kitchen sales.

On the basis of the evidence before it, the Tribunal finds that the licensee was in contravention of the regulations above referred to for the period from January of 1982 to August of 1982.

Mr. Philip Mancini, one of the licensees, gave evidence on behalf of the Applicants. He confirmed that the premises were opened on December 23, 1981, and the liquor licence was issued on December 30, 1981. There were originally 35 employees when the premises were opened, but sales have fallen substantially and the number of employees has been reduced to 20. Mr. Mancini testified that since October of 1982, they have made every effort to increase their food sales. They now open at 11:00 a.m. each day to serve lunch and the luncheon business has increased by 100 per cent over the past three months. They have changed their menus by using place mat menus on the table at all times, including the evening, and these menus are also placed on the bar. There had previously been no hostess after 9:00 p.m., but now a hostess is on duty at all times. He testified that the kitchen is operational until closing and that during the six-week period before this hearing they had been advertising extensively on

radio promoting only food. They now also serve a Sunday breakfast and have between 70 and 80 patrons weekly for their Sunday breakfast. Mr. Mancini testified that their average daily luncheon sales had increased from approximately \$90.00 per day to \$400.00 per day.

There was also introduced on behalf of the Applicants total sales reports for the months of October, November and December and, although there was some small variation, the total food sales ratio for this three-month period was approximately 40 per cent of total sales. Mr. Mancini also gave evidence that their preliminary calculations for January sales indicated that food sales represented 41 per cent of the total establishment sales for that month. Mr. Mancini confirmed that there had been a substantial drop in both liquor and beer sales which he blamed partly on the economy and partly on the fact that the premises were no longer the new place in the area. He stated that originally beer sales were 300 cases per week, but had now dropped to 125 cases per week. Mr. Mancini stated that, in his opinion, the change in ratio was due partly to a reduction in liquor sales as well as an increase in food sales.

Mr. Douglas Joseph Smith was called on behalf of the licensees and gave evidence that he had been hired as a full-time manager and had commenced working at the establishment on February 14, 1983. His resume which was filed indicated that he has had substantial restaurant managerial experience. Mr. Smith confirmed that he had prepared the food - liquor ratio figures covering the period from October 1, 1982 to December 31, 1982, and had checked the daily records. He also stated that he had completed a preliminary report for January which indicated food sales to be 41.2 per cent of the total food and liquor sales for the month of January.

Mr. Grannum, in his argument before the Tribunal, stated that the evidence before the Liquor Licence Board gave it no choice but to impose the term and condition since there had been a substantial breach of the regulations. He acknowledged that since October of 1982, the Licensee had appeared to comply with the tests which have been laid down by the Tribunal in previous appeals, namely, that there must be a proper food operation and that there must be reasonable efforts by the Licensee to meet the ratios. Mr. Grannum argued that this reasonable success has only existed since October of 1982, but acknowledged that it had now been achieved.

Mr. Agostino argued on behalf of the Licensee that although there had been a substantial management problem in early 1982, the problem had been resolved and that the evidence before the Tribunal was that the Licensee were now within the guidelines. He submitted that Section 15(2) of the Liquor Licence Act gives the Licensee a reasonable opportunity to show or achieve compliance before the hearing and that this had now been done.

The Tribunal finds that upon the evidence before it and by virtue of the revised statement as set out in Exhibit #13 in respect of the months of October, November and December, the total receipts from the sale of food have been sufficient so that the requirements of Section 6, Subsection(5) of the Regulation have been met.

Accordingly, by virtue of the authority vested in it under the Liquor Licence Act, the Liquor Licence Appeal Tribunal directs the Liquor Licence Board to remove the term and condition set out in the Decision of the Board.

ROCCO DI GIUSEPPE
(LICENSEE OF TRAMPS RESTAURANT)

APPEAL FROM THE DECISION OF THE
LIQUOR LICENCE BOARD OF ONTARIO

TO REVOKE THE LICENCE

TRIBUNAL: LACHLAN CATTANACH, Q.C., VICE-CHAIRMAN AS CHAIRMAN
BARBARA SHAND, MEMBER
DR. STUART ROSENBERG, MEMBER

COUNSEL: HOWARD S. BUCKMAN, representing the Appellant
S.A. GRANNUM, representing the Respondent

DATE OF
HEARING: 29th December, 1983

ADJOURNMENT AND ORDER

UPON hearing the representations made herein and upon reading
the Consent of both parties filed as Schedule "A" to this Order,

The Tribunal adjourns the hearing to Tuesday, the 20th day of
March, 1984, at 9:30 a.m. upon the terms and conditions as set
out in the said Consent.

IN THE MATTER OF Tramps Restaurant
AND IN THE MATTER OF the Interim
Suspension of the Dining Lounge Licence

CONSENT

The parties hereto agree as follows:

1. Licensee will forthwith employ security staff to patrol both the interior and exterior of the premises to ensure that no disturbances occur, and to ensure orderly departure from the premises.
2. Licensee will prohibit from entering the premises, persons who were involved in the alleged incident of December 15th, 1983.
3. Licensee will not offer free beer to patrons.
4. Licensee will clean up washrooms.
5. Licensee will have meals and menus available for patrons between 11 a.m. and 2 p.m. and 5 p.m. and 9 p.m. Food shall be available to patrons until closing time and shall be offered to patrons.
6. Interim suspension shall be lifted effective noon on the 29th December, 1983.

(Signature H.S. Buckman)
Counsel for R. Di Guiseppe
Licensee

(Signature S. Grannum)
Counsel for Liquor Licence Board

EMPIRE PUBLIC HOUSE (SAULT) LIMITED
(LICENSEE OF EMPIRE TAVERN)

APPEAL FROM THE DECISION OF THE
LIQUOR LICENCE BOARD OF ONTARIO

TO SUSPEND THE LOUNGE LICENCE

TRIBUNAL: JOHN YAREMKO, Q.C., CHAIRMAN
LACHLAN CATTANACH, Q.C., VICE-CHAIRMAN AS MEMBER
THOMAS PEOTTO, MEMBER

COUNSEL: CHARLES H. VAILLANCOURT, representing the Appellant
S.A. GRANNUM, representing the Respondent

DATE OF
HEARING: 3rd November, 1983

REASONS FOR DECISION AND ORDER

A Notice of Proposal dated the 11th day of March, 1983
was issued by the Liquor Licence Board of Ontario:

"...pursuant to Section 10(3) of the
Liquor Licence Act to suspend the liquor
licence of the licence holder for a
period of thirty (30) days because the
past conduct of officers and directors
of the licensee corporation affords
reasonable grounds for belief that its
business will not be carried on in
accordance with law and further, the
licensee corporation is in breach of a
term and condition of its licence in
that, contrary to Section 8(5) of
Regulation 581/80 under the Act, the
licensee corporation, by its officers
and employees, permitted a person
apparently under the age of 19 years to
enter and remain upon the premises
licensed as a Lounge".

The Proposal recited that:

"On Friday, February 18th, 1983 at 12:30 a.m., there was seated in the lounge by the stage of the Empire Tavern a person apparently under the age of 19 years, namely Wendy HIGGINS, born May 22nd, 1964".

On the 19th of May 1983, the Board issued a Decision wherein it found:

"...that the Licence Holder is in breach of a term and condition of its liquor licence in that it has carried on activities that are in contravention of the aforesaid Act and Regulations appurtenant thereto."

Such findings did not state the facts upon which it was based.

The Board ordered a suspension of the licence for three days for

"the reasons cited in the aforesaid 'Proposal'".

It appears that the basis of the action of the Board was the information set out in a general occurrence report filed before it.

The Tribunal finds that the Appellant on the 18th day of February, 1983 did permit one Wendy Higgins, born 22nd May, 1964 to be on the premises for some 17 minutes.

It appears further that no evidence was placed before the Board as to the apparent age of the said Wendy Higgins. The evidence before the Tribunal of a Constable who was present on the premises (though not participating in the action respecting Wendy Higgins) was that Wendy Higgins had the appearance of twenty to twenty-one years of age.

No evidence respecting past conduct of the Licensee was placed before the Tribunal and accordingly the only issue before the Tribunal is the "further" allegation as to the breach of condition set out in Section 8(5) that:

... the licensee corporation, by its officers and employees, permitted a person apparently under the age of 19 years to enter and remain upon the premises licensed as a Lounge".

The Tribunal finds that there was no breach of such condition since the person (Wendy Higgins) was not "apparently under the age of 19 years".

Accordingly, by virtue of the authority vested in it under Section 14(3) of the Liquor Licence Act, the Tribunal hereby revokes the Decision of the Board.

512310 ONTARIO LIMITED
(LICENSEE OF SPIFFY'S RESTAURANT)

APPEAL FROM THE DECISION OF THE
LIQUOR LICENCE BOARD OF ONTARIO

TO ATTACH A TERM AND CONDITION TO THE
DINING LOUNGE LICENCE

TRIBUNAL: LACHLAN CATTANACH, Q.C., VICE-CHAIRMAN AS CHAIRMAN
BARBARA SHAND, MEMBER
THOMAS PEOTTO, MEMBER

COUNSEL: HOWARD SAGINUR, representing the Appellant
S.A. GRANNUM, representing the Respondent

DATE OF
HEARING: 12th October, 1983

REASONS FOR DECISION AND ORDER

This is an Appeal by the Licensee from the Order of the Liquor Licence Board of Ontario dated the 12th day of April, 1983, attaching a "TERM AND CONDITION" that the sale of alcoholic beverages in the dining lounge premises of this establishment shall cease at 11:00 p.m. daily, the said "TERM AND CONDITION" to remain in effect until the licence holder makes application to the Board for removal of same, pursuant to Section 9, subsection 2, of the Liquor Licence Act.

The Licensee is the holder of a dining lounge licence No. 021812 issued on the 5th day of November, 1982. The premises licensed as a dining lounge consist of two areas on the main floor with capacities of 183 and 21 persons respectively.

On the 27th day of January, 1983, the Liquor Licence Board issued a Notice of Proposal to attach a "TERM AND CONDITION" that the sale and service of liquor in the establishment shall cease at 11:00 p.m. due to the fact that the sale of food in the licensed premises has been less than 40 per cent of the total receipts from the sale of liquor and food in the months of September and October of 1982, contrary to Section 9, subsection 6 of Regulation 581/80 as amended by Section 1, subsection 6 of Regulation 845/81 under the Liquor Licence Act. A hearing was requested by the Licensee and, as a result of that hearing, the Board issued its Order above referred to.

Counsel for the Board called as a witness Irene De Berner, an Investigator for the Liquor Licence Board of Ontario, who testified that she attended at Spiffy's Restaurant on several occasions in January of 1983 as a result of her being asked to report on the general operations of the restaurant. The witness stated that she first attended at the premises at approximately 11:20 p.m. on the evening of January 5, 1983, at which time only the large Dining Lounge Number 1 was in operation. It appeared that Dining Lounge Number 2 was being used as an office. She stated that there were approximately 50 patrons present in the lounge at the time. Upon requesting food, she was advised that the kitchen was closed and that only potato chips and peanuts were available. She was told by the waitress that the kitchen usually closed around 9:00 p.m. On January 6, Ms. De Berner again attended at the premises at about 10:40 p.m., and there were approximately 150 patrons in the dining lounge. The only food available was peanuts and chips and, in conversation with the bartender, she was advised that the kitchen regularly closed between 9:00 p.m. and 9:30 p.m.

Ms. De Berner testified that she again attended at the premises at approximately noon on January 7, 1983. At that time, there were 13 patrons in the establishment for lunch and between 8 and 15 patrons in the bar area consuming alcoholic beverages only. She counted 46 place settings for lunch. She returned again at 5:30 p.m., at which time there were no dinner patrons in the dining lounge, but approximately 20 patrons in the bar area. No food was being served. She again returned to the premises at about 11:30 p.m. that evening, but could not get in because the dining lounge was filled to capacity.

Ms. De Berner testified that she reviewed the Board's files for the months of August, 1982, to October, 1982, inclusive, which were the statements filed by the Licensee for these months and are as follows:

<u>Date</u>	<u>Total Liquor Sales (Percentage)</u>	<u>Total Food Sales (Percentage)</u>
August, 1982	84%	16%
September, 1982	73%	27%
October, 1982	83%	17%

The witness advised that no reports had been filed with the Liquor Licence Board subsequent to October of 1982.

The next witness called on behalf of the Board was Joseph Cardwell, an Inspector with the Liquor Licence Board for approximately four years. He advised that he had made seven inspections of the premises during the year 1983. He found that the food in the premises was of good quality, but that a majority of the patrons during lunch were, as he put in, "alcoholically inclined". The witness testified that on May 19, 1983, he attended at the premises at approximately 8:50 p.m. and stated that there was a large crowd which was close to capacity. He spoke to Mr. John MacMillan, the proprietor of the restaurant, about the lack of persons who were dining since only about four persons were eating in the lounge. He was taken to the kitchen of the restaurant to be shown the number of dirty dishes, but there was no chef on duty. Mr. MacMillan advised him that food was available and that the menu had been altered on two or three occasions. Mr. Cardwell testified that he also attended at the premises on May 26, 1983 at 6:30 p.m. and that at that time most of the patrons were in the bar area and were not eating. His last visit was on May 29, 1983.

Under cross-examination, Mr. Cardwell acknowledged that there had been no discussions with Mr. MacMillan since the end of May and that he had no information with respect to the 1983 ratios.

Prior to completing his case, Mr. Grannum, counsel for the Board, referred the Tribunal to Exhibit Number 6 which had been filed by counsel for the Licensee and which was a summary of liquor/food ratios for the period from September of 1982 to September of 1983, inclusive.

Mr. John W. MacMillan was called as a witness on behalf of the Licensee and he confirmed that he was the President and sole shareholder of 512310 Ontario Limited. He stated that the business was in receivership when he and a partner, Wayne Loughheed, purchased in it September of 1982. Mr. MacMillan stated that at first the food proportion of total sales was between 26 and 28 per cent. He gave evidence with respect to problems with his former partner and also with the landlord and that this had originally detracted from his ability to properly operate the dining lounge. He stated that various efforts were being made to improve the food ratio and he produced various newspapers clippings together with drafts of new menus, and he confirmed that the use of a place mat type of menu after April of 1983 had helped to increase the food sales. Mr. MacMillan stated that he had hired a new manager after April of 1983 and that food is now available until approximately 11:30 p.m. He acknowledged that he was finding it very difficult to increase the food ratio. Under

cross-examination, Mr. MacMillan confirmed that he had managed the restaurant for the receiver, Price-Waterhouse, for the period from May 14, 1982 until September of 1982, when he and his partner purchased the restaurant and he was aware of the ratio problems at that time. He confirmed that Mr. Cardwell, the Liquor Licence Board Investigator, emphasized the ratio problem and he confirmed that he was well aware of the current regulations. He stated that there was a higher proportion of liquor sales between 9:00 p.m. and 11:00 p.m. each evening, but that after 11:00 p.m. there was a winding down period and that recently he had found quite a demand for late orders of chicken wings. He suggested to the Tribunal that the stopping of liquor sales at 11:00 p.m. each evening would not improve the food/liquor ratio. Mr. MacMillan advised that there were 31 employees, including full-time and part-time employees, and that he provided taped music on Thursday, Friday and Saturday evenings and live music on Wednesday and Sunday.

William Ferrie was called as a witness on behalf of the Licensee and confirmed that he had been hired as manager for Spiffy's Restaurant on or about May 15, 1983. His first responsibility was to improve the marketing of food and he prepared rough copies of new menus including many types of finger foods. He stated that the establishment had a good lunch time base and that research with respect to Saturday and Sunday brunch trade was favourable. He stated that the restaurant needed more experienced kitchen staff with more creativity and that he had been initiating various innovations from May when he took over as manager up to the present time. Under cross-examination, he advised that in his opinion part of the problem was that the food prices were too low and this was a major cause of the disruption in the ratio.

Counsel for the Board in argument stated that Regulation 9(6) of the Liquor Licence Act was clear and unequivocal and that it was compulsory to comply with the minimum ratio requiring that 40 per cent or more of total sales must be sales of food. He argued that Mr. MacMillan knew of the regulation when he took over the ownership of the restaurant in September of 1982, and that no serious attempt had been made to correct the imbalance of the ratio until the spring of 1983 when the Licensee received the Board's Notice of Proposal. Mr. Grannum pointed out that even in September of 1983, food sales still only made up 30 per cent of the total sales. He stated that the physical plant was there, but that efforts to promote food sales had been lacking until recently. He argued that the Board had seen fit to impose an 11:00 p.m. restriction on the sale of liquor and that this was necessary in order to achieve the proper ratio to comply with the regulation.

Counsel for the Licensee in argument stated that Mr. MacMillan had acquired a bankrupt business and that he had immediately run into serious partner and landlord problems which had occupied much of his time. He had hired a full-time manager in May of 1983 and significant improvement had been achieved since that time. He refuted the inference that Mr. MacMillan had not tried to achieve the ratio and he suggested to the Tribunal that the penalty imposed by the hiring of Mr. Ferrie as a full-time measure was a positive penalty, while the penalty imposed by the Board was a negative penalty.

Regulation 9(6) of the Liquor Licence Act reads as follows:

"In each premises for which a dining room or dining lounge licence is issued, the total receipts from the sale of food in any month shall not be less than 40 per cent of the total receipts from the sale of liquor and food in that month and a daily record showing the sales of liquor and food shall be maintained."

The Tribunal has reviewed the evidence before it and it would appear that the Licensee is taking positive steps to achieve a proper food/liquor ratio. However, the Tribunal is faced with the stark fact that for the 13-month period from September of 1982 to September of 1983, inclusive, the highest ratio for the sale of food attained was only 30 per cent which is a full ten per cent below the minimum required by the Act. The Tribunal accepts the argument of Counsel for the Board that Regulation 9(6) is compulsory and must be adhered to. The Tribunal would point out that when a proper ratio has been achieved, the Licensee is entitled to make application to the Board for the removal of same.

The Tribunal hereby confirms the Decision of the Liquor Licence Board dated the 12th day of April, 1983, and directs the Board to set the date of commencement of the said "TERM AND CONDITION". *

* Note: The above decision was appealed to the Supreme Court of Ontario (Divisional Court). The appeal had not been concluded at the time of this publication.

SLOBADAN IVANOVIC
(LICENSEE OF FALLS VIEW HOTEL)

APPEAL FROM A DECISION AND ORDER OF THE
LIQUOR LICENCE BOARD OF ONTARIO

TO REFUSE TO RENEW THE LIQUOR LICENCES

TRIBUNAL: JOHN YAREMKO, Q.C., CHAIRMAN
BARBARA SHAND, MEMBER
KENNETH VAN HAMME, MEMBER

COUNSEL: SLOBADAN IVANOVIC, appearing in person
S.A. GRANNUM, representing the Respondent

DATE OF
HEARING: 24th June, 1983

REASONS FOR DECISION AND ORDER

The Tribunal finds and indeed it is admitted that the licence holder as trustee of monies collected on account of retail sales tax, failed to remit such tax to the Ministry of Revenue. The amount of tax presently due and payable is estimated at \$6,800.00.

The licensee has also failed to file returns as required by law.

The Tribunal finds that having regard to his financial position, the licensee cannot reasonably be expected to be financially responsible in the conduct of his business.

The Tribunal has to determine what action should follow the existence of these above reasons that would disentitle the licensee to a licence under section 6.

By virtue of the authority vested in it under Section 14(3) of the Liquor Licence Act, the Tribunal alters the decision of the Liquor Licence Board dated the 12th day of April, 1983, as follows:

1. The decision of the Board to refuse the renewal of the licences is revoked.

2. The Board is directed to issue a renewal of the licences.
3. The licences are forthwith suspended until:
 - a) There has been paid to the Ministry of Revenue, Retail Sales Tax Department, at its Welland office, the sum of \$3,000.00 by certified cheque.
 - b) There has been filed with the said office, retail sales tax returns for the months of January to May, 1983.
 - c) The licence-holder executes a mortgage in favour of Her Majesty The Queen in right of the Province of Ontario as represented by the Ministry of Revenue to secure the payments hereinafter referred to.
 - d) Ministry of Revenue, Retail Sales Tax Branch advises the Liquor Licence Board that conditions (a), (b) and (c) have been satisfied.
4. The licences are issued subject to the following terms and conditions:
 - a) The above payment 3(a), above filing 3(b), and above mortgage 3(c), shall be made on or before the 15th day of July, 1983.
 - b) The sum of \$1,800.00 on account of arrears shall be paid to the said Retail Sales Tax office by certified cheque on or before the 15th day of August, 1983, and the balance for arrears owing as determined by the office shall be so paid on or before the 15th of September, 1983.
 - c) Current sales tax returns to be paid on or before the 23rd of each month by certified cheque delivered to the Welland office.

In the event that the said terms and conditions are not complied with, the licences shall be suspended until the said terms and conditions are complied with, and if the said terms and conditions are not complied with within one month of default, the licences shall be revoked.

LAKE ABBEY HOTEL INC.
(LICENSEE OF LAKE ABBEY TAVERN)

APPEAL FROM THE DECISION OF THE LIQUOR
LICENCE BOARD

APPROVING THE APPLICATION
FOR A "PATIO" (DINING LOUNGE) LICENCE
AND A "PATIO" (LOUNGE) LICENCE

TRIBUNAL: LACHLAN CATTANACH, Q.C., VICE-CHAIRMAN as CHAIRMAN
BARBARA SHAND, MEMBER
KENNETH VAN HAMME, MEMBER

COUNSEL: PAUL LEON, representing Caisse Populaire Welland
Limitée

JOHN A. WATSON and WILLIAM T. SMITH, appearing in
person

S.A. GRANNUM, representing the Liquor Licence Board

No one appearing for Licensee.

DATE OF
HEARING: 13th January, 1983

SPECIFICATION AS THE PARTIES TO PROCEEDINGS

UPON APPLICATION OF Caisse Populaire Welland Limitée, by virtue
of the authority vested in it by Section 14(5), the LIQUOR
LICENCE APPEAL TRIBUNAL hereby specifies as Parties to the
proceedings before the Tribunal in this matter:

- John A. Watson and William T. Smith
in their personal capacity and on behalf of
certain other residents
- Caisse Populaire Welland Limitée

DATED at Toronto this 13th day of January, 1983.

LAKE ABBEY HOTEL INC.
(LICENSEE OF LAKE ABBEY TAVERN)

APPEAL FROM THE DECISION OF THE LIQUOR
LICENCE BOARD

APPROVING THE APPLICATION
FOR A "PATIO" (DINING LOUNGE) LICENCE
AND A "PATIO" (LOUNGE) LICENCE

TRIBUNAL: LACHLAN CATTANACH, Q.C., VICE-CHAIRMAN as CHAIRMAN
BARBARA SHAND, MEMBER
KENNETH VAN HAMME, MEMBER

COUNSEL: PAUL LEON, representing Caisse Populaire Welland
Limitée

JOHN A. WATSON and WILLIAM T. SMITH, appearing in
person

S.A. GRANNUM, representing the Liquor Licence Board

No one appearing for Licensee.

DATE OF
HEARING: 13th January, 1983

REASONS FOR DECISION AND ORDER

This is an appeal by John A. Watson and William T. Smith on behalf of themselves and other residents from the Order of the Liquor Licence Board of Ontario dated the 17th day of August, 1982, approving the application of the Licensee for a "Patio" (Dining Lounge) Licence and a "Patio" (Lounge) Licence to be added to the existing licences at the above premises.

Included in the parties appearing before the Tribunal were the Appellants who were not represented by counsel and Paul Leon, counsel for Caisse Populaire Welland Limitée, the mortgagee of the premises occupied by the Licensee upon application made at that time. Caisse Populaire Welland Limitée was made a party to the proceedings before the Tribunal and the necessary Order was made.

At the beginning of the proceedings, counsel for Caisse Populaire Welland Limitée requested an adjournment of the proceedings as the mortgagee had only taken possession of the premises on December 29, 1982, due to the abandonment of the premises by the Licensee. Mr. Leon advised the Tribunal that he was not in a position to deal with any of the issues raised by the appeal. He advised that the hotel was not in operation and that the mortgagee was not prepared to operate the hotel itself. At this time, they had no prospective purchaser.

It was pointed out that the mortgagee in possession would be selling the property on an "as is" basis and counsel for the mortgagee advised that so long as the right to make a new application for the "Patio" licences, either by Caisse Populaire Welland Limitée or by a subsequent purchaser, were not prejudiced, the mortgagee was prepared to consent to an order of the Tribunal allowing the appeal and revoking the decision of the Liquor Licence Board.

Upon consent of the parties appearing, and by virtue of the authority vested in it under Section 14(3) of the Liquor Licence Act, the Liquor Licence Appeal Tribunal orders that the decision of the Board dated the 17th day of August, 1982, granting the Patio licences be revoked without prejudice to the rights of the Licensee, Caisse Populaire Welland Limitée, or a subsequent purchaser to make an application for the said Patio licences in the future provided that such application is made in good faith.

LES GIRLS SPORTS CLUB

APPEAL FROM THE DECISION OF
THE LIQUOR LICENCE BOARD

REFUSING TO ISSUE FURTHER SPECIAL OCCASION PERMITS

TRIBUNAL: JOHN YAREMKO, Q.C., CHAIRMAN
BARBARA SHAND, MEMBER
DR. STUART E. ROSENBERG, MEMBER

COUNSEL: JACQUI DAVIS, agent for Les Girls Sports Club
S.A. GRANNUM, representing the Appellant

DATE OF
HEARING: 7th July, 1983

REASONS FOR DECISION AND ORDER

Special Occasion Permit no. S259147 was issued to Ms. Grace Lawrence on behalf of Les Girls Sports Club for a function to be held on the 13th day of November, 1982 between the hours of 7:30 p.m. and 1:00 a.m. on the following day.

On the 14th November, 1982, at approximately 2:30 a.m., a police officer attended at the premises and observed that two bottles of beer were received from a bar by a male who took them to a table. The officer also observed that there were approximately 100 persons on the premises and that some of that number were consuming beverages out of bottles. Beer bottles and glasses containing liquid were in view.

The Tribunal finds the glasses and bottles related to beer.

The permit holder, Grace Lawrence, had left the premises at about 1:00 a.m. Ms. Jacqui Davis, Club President, was in charge of the premises.

The Tribunal finds that the permit holder Grace Lawrence has carried on activities that are contrary to Section 37(6) of Regulation 581/80 under the Act in that the permit holder failed to remove all evidence of the service and consumption of liquor within 45 minutes after the expiry of the permit.

Accordingly the Liquor Licence Board was empowered under the Act to refuse to issue the Special Occasion Permits.

It has been argued that the refusal to issue for a period of one year is too harsh. The Tribunal notes that the Appellant herein has traditionally applied for four permits a year so that the penalty, in fact, relates not so much to the time factor as to the number of permits refused to the Applicant.

The Tribunal has traditionally not interfered in the administrative action of the Board in respect of penalties unless there is a reason therefor.

The Tribunal finds no such reason in this matter.

Accordingly, by virtue of the authority vested in it under Section 14(3) of the Liquor Licence Act, the Liquor Licence Appeal Tribunal hereby confirms the decision of the Board.

NORTHBURY HOTELS LIMITED
(LICENSEE OF NORTHBURY HOTEL)

APPEAL FROM THE DECISION OF THE LIQUOR LICENCE BOARD
TO SUSPEND THE LOUNGE LICENCE ISSUED FOR THE PREMISES
IN THE NORTHBURY HOTEL KNOWN AS "MY PLACE" LOUNGE

TRIBUNAL: LACHLAN CATTANACH, Q.C., VICE-CHAIRMAN AS CHAIRMAN
GALE McAULEY, MEMBER
KENNETH VAN HAMME, MEMBER

COUNSEL: A.L. FAVRETTO, agent representing the Licensee
S.A. GRANNUM, representing the Liquor Licence Board

DATE OF
HEARING: 15th June, 1983

REASONS FOR DECISION AND ORDER

This is an appeal by the Licensee from the Order of the Liquor Licence Board of Ontario dated the 8th day of March, 1983, suspending the lounge licence for the premises in the Northbury Hotel situate at 50 Brady Street, Sudbury, Ontario known as "My Place" lounge for a period of eight days.

The Licensee is the holder of dining lounge and lounge licences No. 010905, which was originally granted in August of 1972. The premises licensed as a dining lounge consists of three areas, located on the main floor of the establishment with capacities of 94, 67 and 130 respectively. The premises licensed as a lounge consist of two areas, also located on the main floor, with capacities of 51 and 334 persons.

On the third day of February, 1983, the Liquor Licence Board issued a Notice of Proposal "to suspend for a period of fourteen (14) days the liquor licence(s)" for the said establishment. A hearing was requested by the Licensee and, as a result of that hearing, the Board issued its Suspension Order above referred to. The Licensee is appealing from that Order.

Counsel for the Liquor Licence Board called as a witness, Sergeant Patrick Mills of the Sudbury Regional Police, who gave evidence on behalf of the Board. He stated that included in his duties is the responsibility to inspect licensed premises within the Sudbury area. He stated that

accompanied by Sergeant Bertrand of the Sudbury Regional Police, he entered the lounge in the Northbury Hotel known as "My Place" lounge at approximately 10:20 p.m. on the evening of December 7th, 1982. Sergeant Mills stated that several patrons entered the premises and that some were of questionable age. He also stated that no doorman was on duty at either entrance to the Lounge checking for identification. Sergeant Mills stated that two girls left the lounge and went into the lobby. On their return to the lounge they were challenged. One of these girls was identified as Laurie Anne Rivers, age 17, born March 21, 1965. The second person was apparently over the age of 19 years and was not charged. Sergeant Mills testified that the said Laurie Anne Rivers was charged and subsequently convicted under the provisions of Section 44(5) of the Liquor Licence Act. In his evidence, Sergeant Mills, stated that he was surprised that there was no doorman on duty on this occasion and that these premises practically always would have a doorman checking patrons as they entered the lounge.

On cross-examination Sergeant Mills acknowledged that this was a routine check by two officers in plain clothes and that the Rivers girl was seated inside the lounge. Sergeant Mills asked her for her identification because of her appearance and when asked for identification she produced nothing. Sergeant Mills was shown pictures of signs at the entrance to the lounge stating that age of majority cards were required and he acknowledged the existence of the said signs. He stated that the lounge was not particularly busy that night and that after the Rivers girl was charged, he did not report the incident to the Hotel Management. Sergeant Mills stated that the Northbury Hotel had a good reputation and had always attempted to obey the law.

Donald George Kampman, an inspector with the Liquor Licence Board of Ontario for the Sudbury area, was called as a witness for the Licensee. He stated that he was familiar with the operations of the Northbury Hotel for the past two years and that it had the reputation of being one of the best hotels in the Sudbury area with respect to its rooms, the quality of its food and the operation of its lounges. He had never had any problems with the Northbury Hotel and only became aware of the incident resulting in these proceedings approximately one week after the charges were laid. On cross-examination Mr. Kampman confirmed that he spoke with Mr. Favretto of this incident in January and that Mr. Favretto was aware of the charge. Mr. Kampman stated that he inspected the Northbury Hotel about once a year and had no knowledge of the security arrangements implemented by the hotel.

Susanne Howe, the supervisor of waitresses at the Northbury Hotel, was called as a witness. She had been an employee of the hotel for the past year. She confirmed that all waitresses were given explicit instructions with respect to minors and that if there was any possibility of a patron being under age, the waitress must ask for an "age of majority" card. If none was produced, that patron would be asked to leave. This matter was discussed at every staff meeting. She confirmed the existence of a notice to staff re minors which was posted behind the bar and was accessible to all members of the staff. She also confirmed the existence of the signs at the entrances throughout the premises. The witness stated that she worked on the night of December 7th and did not think that she had served any minors. She stated that because it was harder to identify underage drinkers in the bar because of the lighting and their ability to change their appearance with a lot of make-up. She stated that December 7th was not a busy night and that there were between twenty-five and thirty people in the bar at approximately 10:30 p.m. She stated that approximately ten people left the bar at one time, but not because of the presence of the police officers. She was not aware that the police were in the bar until they went into the lobby to challenge the two patrons.

Under cross-examination Miss Howe stated that it was difficult to determine the age of patrons in the lounge because of the lighting and she confirmed that on the evening of December 7th they were short staffed and there was no doorman on duty. She stated that there was now a doorman on duty every night that the lounge is open.

Shirlie Page, a cocktail waitress, employed by the Northbury Hotel for the past one and one-half years, was called as a witness on behalf of the Licensee. She stated that she was responsible to the assistant manager and that it was always the policy to ask for identification if a waitress suspected that a customer might possibly be under age. She advised on many occasions of the need to watch out for underage patrons. She stated that in her experience she had asked for identification from a patron even when a doorman was on duty, but always when she checked with the doorman the patron had already been cleared. She stated that she worked the evening of December 7th, and that to her knowledge she did not serve any minors. She stated that the hotel is busier now than it was in December and that on December 7th they didn't even need two waitresses.

The Licensee called as a witness Paul Marcon, who testified that he had held the position as head doorman and supervisor for the past two to three months. He has five employees under his jurisdiction. Mr. Marcon stated that on December 7th he was responsible to the manager and that his duties included the checking of underaged customers, the number of customers on the premises and the behaviour of customers at all times. He identified the staff memo behind the bar and also the photograph showing the various signs posted throughout the premises. He stated that it was now a policy to ask for identification when people entered the lobby and that the waitresses or bartenders were authorized to question the judgment of a doorman at all times. He stated that he cannot always rely on the efficiency of the doorman and that he had fired two or three men over the past few months for inefficiency. Mr. Marcon stated that he was not on duty on the evening of December 7th but was in the bar drinking. He saw the incident of three girls, who apparently approached the lounge at the time the Rivers girls was being questioned but were turned away. Mr. Marcon produced the daily labour sheets for the week of December 6th which confirmed that there was no doorman on duty for the evenings of December 6th or 7th, 1982. He stated that the volume of business determined the number of doormen on duty and at that time business was very slow. He stated that now there is a policy to have one or two doormen at the door together with one inside the lounge.

Counsel for the Board in his argument stated that the Licensee was in breach of Section 8(6)(a) of the Regulations to the Liquor Licence Act which provides:

"The holder of the licence shall ensure that evidence as to the age of the person, satisfactory to the licence holder, is obtained: (a) prior to permitting a person apparently under the age of 19 years entry to premises not prescribed by Section 51;"

Mr. Grannum argued that the Licensee had failed to take proper steps to confirm the age of the patron Laurie Anne Rivers and that there must have been something in her appearance that caused the police officers to ask her for identification. He stated that it was acknowledged that there was no doorman on duty on the evening of December 7th and that there were attempts by other underage persons to enter the premises and were stopped by the presence of the police officers. He argued that there is a heavy onus on a Licensee to enforce the regulations of the Liquor Licence Act and that such regulations

do not take into account the economic conditions which may exist at the time. Mr. Grannum pointed out that the Board's decision did not affect the other lounge or dining lounge licences within the premises and that the only question to be dealt with by the Tribunal is really a question of the penalty to be imposed.

Mr. Favretto in his argument on behalf of the Licensee stated that the problem of underage drinkers is a source of constant fear for all Licensees. He stated that the Act provides for protection of the Licensee and refers specifically to Section 44 of the Act which provides that no person shall "knowingly" sell or supply liquor to a person under the age of nineteen years. Mr. Favretto stated it was a question of whose judgment is to be applied. He stated that the Licensee was not allowed to examine the accused to determine whether or not she was under the age of nineteen years. He argued that as a matter of policy the Licensee should always be advised so that:

1. He could judge for himself;
2. The person could be kept out in the future;
3. The opportunity to observe an underage patron would enable the Licensee to defend himself in future proceedings.

Mr. Favretto further suggested that any minor convicted under Section 44(5) of the Act should be subpoenaed before the Board and the Tribunal so that they could judge for themselves whether the Licensee knowingly permitted the sale of liquor to a person under the age of nineteen years.

Mr. Favretto argued that the Licensee had acted with proper diligence at all times by the provisions of staff memos, the erection of signs, having doormen on duty on most occasions subject to economic conditions and stressing the importance of identification checks at all staff meetings. He referred to the 1978 Northbury Hotel case before the Tribunal and suggested that the Licensee had acted prudently and diligently at all times.

At the end of the argument, Mr. Favretto raised a technical objection that Section 13(1) of the Liquor Licence Act required the Chairman of the Liquor Licence Board to refer a hearing before the Board to two members of the Board. He stated that the hearing of the proposal in this matter was referred by the Chairman to the Chairman and one member and he argued that the Board was not properly constituted.

In dealing with the technical objection raised at the end of the argument, the Tribunal was of the opinion that the hearing before the Liquor Licence Board was properly constituted and refers to its reasons for this decision in the appeal by Bidwell Investments Limited, Licensee of President Motor Hotel.

The Tribunal is of the opinion that there is sufficient evidence before it that the Licensee was in breach of the Regulations, specifically Regulation 8(6)(a) of the Liquor Licence Act. The evidence before the Tribunal was that there was at least one person in the premises on the evening of December 7th, 1982, who was charged and convicted under Section 44(5) of the Liquor Licence Act and we also have the acknowledged evidence that there was no doorman on duty on that evening. There is some evidence before the Tribunal of poor lighting in the lounge and it is the opinion of the Tribunal that this places a greater onus on the Licensee to ensure that the provisions of the Act are being complied with. The Licensee made reference to the economic conditions making it necessary to operate the lounge under certain circumstances without a doorman, but these are not matters that the Tribunal is entitled to take into account in determining whether there has been compliance with the requirements of the Act.

In the opinion of the Tribunal the matter resolved itself to a question of penalty. The Tribunal is impressed with the steps that have been taken by the Licensee to correct the previous inadequacies in its security and to prevent the reoccurrence of the previous breach. The evidence is that there is always a doorman on duty and the evidence of the Liquor Licence Inspector confirmed the excellent reputation of the Licensee.

In the circumstances the Tribunal is of the opinion that the period of suspension should be reduced. The Tribunal therefore alters the decision of the Liquor Licence Board of Ontario dated March 8th, 1983, and directs that the lounge licence issued to Northbury Hotels Limited for the "My Place" lounge at the Northbury Hotel in Sudbury be suspended for a period of three days and directs the Board to set the date of the commencement and termination of the said period of suspension.

SLAVA DISCO RESTAURANT & HALL

APPEAL FROM THE DECISION OF
THE LIQUOR LICENCE BOARD

REFUSING TO ISSUE FURTHER SPECIAL OCCASION PERMITS
FOR FUNCTIONS AT CERTAIN PREMISES

TRIBUNAL: JOHN YAREMKO, Q.C., CHAIRMAN
BARBARA SHAND, MEMBER
DR. STUART E. ROSENBERG, MEMBER

COUNSEL: C. MELLO, agent for Slava Disco Restaurant & Hall
S.A. GRANNUM, representing the Respondent

DATE OF
HEARING: 7th July, 1983

REASONS FOR DECISION AND ORDER

The Slava Disco Hall, located at 1292 Queen St. West, Toronto, is owned by Ms. Jaroslawa Raczowska. She purchased the building about three years ago and about ten months ago began to rent the premises to groups and organizations for \$150.00 a day and knew or ought to have known that the sale of liquor would take place under Special Occasion Permits. Indeed there would be no rental but for the Special Occasion Permits.

On the 15th April, 1982, the Board approved the main floor, north section of the building for Special Occasion Permits, i.e. all the requirements under the Act and Regulations in respect of such premises were met by these premises, inclusive of the inspection and approval by the City of Toronto Fire Department and the City of Toronto Department of Health and the Board's Inspection Department.

On the 13th November, 1982, the premises were rented to Ms. Grace Lawrence, a member of the social committee of Les Girls Sports Club, for a social function from 7:30 p.m. to 1:00 a.m. of the following day.

Ms. Raczowska is not a member of Les Girls Sports Club and did not attend the event.

On that occasion the permit holder was in breach of Regulation 37(6) and the Tribunal has so found.

The issue before the Tribunal is:

"Does the Board have jurisdiction, because of a breach of the regulations by a permit holder, to disqualify a premises from Special Occasion Permits where the owner of the premises did not apply for a permit and, except for receiving rent for the use of the premises, is not financially associated with the permit holder or the organization, is not a member of the organization and was not present at the event?

The Liquor Licence Act, Section 8(1), (2) and (3) set out the Board's authority to issue Special Occasion Permits and the grounds for refusal.

The relevant section of the Regulations is Section 37(1) headed "Special Occasion Permits - General":

"37(1) The terms and conditions applicable to the holder of licences as set out in section 8 apply with necessary modifications to holders of special occasion permits."

Section 8(15) reads:

"Every licensed premises shall be under the management and supervision of a person who has experience in the food and beverage industry such that he is capable of managing an orderly and efficient operation."

Another relevant subsection of 37 is (11):

"The holder of a special occasion permit shall provide adequate security to ensure unauthorized persons do not attend the event and that the terms and conditions of the permit and the provisions of the Act, and this Regulation are observed."

It has been submitted by counsel for the Respondent that Section 8(15) of the Regulations places a responsibility on the owner of the premises that has been approved by the Board for permits and is therefore a licensed premises, to provide experienced management and supervision of the premises.

The powers of the Board are set out in the Act, namely in Sections 9 and 10 and the basis for the exercise of the powers of the Board are related to Sections 6 and 8. The Tribunal finds no authority in the Act or indeed in the Regulations, that imposes the kind of responsibility that the Board is of the opinion exists in the instance of the Appellant herein.

The Tribunal finds that the Board has no jurisdiction to take the action it has in respect of the Appellant related to the premises herein.

The obligation is clearly spelled out in relation to the permit holder as set out in Section 37(11). The Tribunal is of the opinion that Section 37(1) and Section 8(15) of the Regulations read together do not impose responsibility on the Appellant nor do these Sections give the Board authority to take the action it has purported to take.

The Tribunal distinguishes the decision in Sterio's Restaurants Limited vs. The Liquor Licence Board in that in that case, the premises in question were licensed under the Act apart from the Special Occasion Permit issued in respect of the premises.

Accordingly, by virtue of the authority vested in it under Section 14(3) of the Liquor Licence Act, the Liquor Licence Appeal Tribunal hereby revokes the decision of the Board.

373857 ONTARIO LIMITED
(LICENSEE OF BOBBY JO'S RESTAURANT)

APPEAL FROM THE DECISION AND ORDER OF THE
LIQUOR LICENCE BOARD OF ONTARIO

TO REFUSE TO ISSUE AN
'ENTERTAINMENT LOUNGE' LICENCE

TRIBUNAL: LACHLAN CATTANACH, Q.C., VICE-CHAIRMAN AS CHAIRMAN
BARBARA SHAND, MEMBER
THOMAS PEOTTO, MEMBER

COUNSEL: A.T. LEOUSIS, representing the Appellant
S.A. GRANNUM, representing the Respondent
ROBERT HOLLAND, Deputy Solicitor,
representing the City of Oshawa
MRS. DIONNE, Trustee,
representing the Durham Board of Education

DATE OF
HEARING: 14th December, 1983

ADJOURNMENT AND ORDER

UPON the application of the Appellant for an adjournment, the other Parties to the proceedings not objecting, this Hearing is adjourned sine die to a date to be established by the Tribunal, such new date to be pre-emptory.

384609 ONTARIO LIMITED
(LICENSEE OF NICK'S PLACE)

APPEAL FROM THE DECISION OF THE
LIQUOR LICENCE BOARD OF ONTARIO

TO SUSPEND THE DINING LOUNGE LICENCE

TRIBUNAL: LACHLAN CATTANACH, Q.C., VICE-CHAIRMAN AS CHAIRMAN
BARBARA SHAND, MEMBER
THOMAS PEOTTO, MEMBER

COUNSEL: RICHARD R. MORROW, representing the Appellant
S.A. GRANNUM, representing the Respondent

DATE OF
HEARING: 5th October, 1983

REASONS FOR DECISION AND ORDER

This is an Appeal by the Licensee from the Order of the Liquor Licence Board of Ontario dated the 5th day of May, 1983, suspending the dining lounge licence for the premises known as "Nick's Place", Stone Road, Guelph, Ontario, for a period of seven days.

The Licensee is the holder of dining lounge licence No. 091903 issued on the 26th day of October, 1981. The premises licenced as a dining lounge consist of two areas on the main floor with capacities of 75 and 47 persons, respectively.

On the 11th day of March, 1983, the Liquor Licence Board issued a Notice for Proposal "to suspend for thirty (30) days the dining lounge licence" for the said establishment. A hearing was requested by the Licensee and, as a result of that hearing, the Board issued its Suspension Order above referred to.

Counsel for the Board called as a witness Donald Jeffrey Hunt, a police constable with the Guelph Police Department, who gave evidence that he attended at Nick's Place with three other police officers at about 10:00 p.m. on the evening of February 4, 1983, to make a routine check of the premises for violations of the Liquor Licence Act. Constable Hunt stated that he entered the main entrance of the dining

lounge and observed between 15 and 20 customers in Dining Lounge No. 2. Constable Hunt stated that he immediately recognized one, John Johnston, sitting at the bar having a beer and he knew that the said John Johnston was under age. Constable Hunt also observed two other persons sitting at a table having mixed drinks and he identified them as Mark Deskur and his wife Jocelyn Deskur. At first they denied that they were under age but subsequently, both the said Mark Deskur and Jocelyn Deskur admitted that they were under age, the said Mark Deskur having been born on August 13, 1964, and Jocelyn Deskur having been born on April 2, 1966. The said John Johnston, Mark Deskur and Jocelyn Deskur were all charged and subsequently convicted under the provisions of Section 44(5) of the Liquor Licence Act and Certificates of Conviction were entered as exhibits in these proceedings. Constable Hunt stated in his evidence that Mr. and Mrs. Deskur acknowledged that they were drinking alcoholic beverages and he identified them as vodka and orange juice. Constable Hunt stated that the staff on duty consisted of a bartender and a waitress, but that there was no doorman or hostess.

Under cross-examination, Constable Hunt stated that he knew John Johnston and that he did not request identification since he knew that he was under age. He also confirmed that he approached the Deskur couple because they appeared to be under age. He acknowledged that they originally denied that they were under age and that they were bold enough to attempt to bluff it out. Constable Hunt stated that he did not know if Mr. and Mrs. Deskur produced identification to the waitress and he did not speak to either the bartender or the waitress.

Mr. Nicholas Melehes was called as a witness on behalf of the Licensee and he confirmed that he was the President and sole shareholder of the Licensee, 384609 Ontario Limited, and had been the owner and operator of Nick's Place for the past five years. Mr. Melehes stated that he trained his own staff and stressed to all members of the staff that they must comply with the Regulations of the Liquor Licence Board of Ontario. He stated that it is now the policy of his staff to require age of majority cards and that the dining lounge now has a hostess on duty. Mr. Melehes stated that he was not on the premises at the time the police officers arrived on the evening of February 4.

Mr. Melehes testified that he had been told by the waitress on duty that she had asked Mr. Deskur for identification and that he produced his driver's licence showing that he was born in the year 1964, but the waitress

apparently made no attempt to check the actual date of birth on the driver's licence. The waitress was advised that Mrs. Deskur was in the washroom and she made no request for identification from Mrs. Deskur.

On cross-examination, Mr. Melehes acknowledged that there were about 15 customers in the dining lounge on the evening in question and he admitted that it would have been quite easy to have checked the age of all patrons. He also acknowledged that he had been warned in 1981 by the Liquor Licence Board of problems relating to the serving of minors.

Counsel for the Board in argument stated that on the evening in question, the premises were not busy and that a vigilant employee could have easily determined that the three persons who were charged and convicted were actually under age. The waitress who was on duty that evening was not called as a witness and her evidence is only the hearsay evidence of Mr. Melehes, but Mr. Grannum surmised that the waitress must have been suspicious since she asked for evidence of age. Mr. Grannum argued that the law is clear that the negligence of an employee in enforcing the provisions of the Liquor Licence Act must be attributed to the Licensee and the Licensee is bound by such negligence. He stated that there was nothing before the Tribunal to justify any change in the Decision of the Liquor Licence Board.

Counsel for the Licensee argued that the Licensee was only responsible to meet a standard of care required of a reasonable person. He stated that when the Deskurs were approached by Constable Hunt they lied as to their age and they had also lied to the waitress. He argued that reasonable enquiries by the employee were all that were required. Mr. Morrow stated that the police officer did not ask what the customers had said to the waitress and he argued that this was very important to the facts.

Mr. Morrow submitted that his second ground of appeal on behalf of the Licensee was that the penalty imposed by the Liquor Licence Board was excessive. He stated that a one-week suspension of a liquor licence for a dining lounge in a mall would be disastrous financially and that a warning would be appropriate under the circumstances.

The Tribunal is of the opinion that there is sufficient evidence before it to find that the Licensee was in breach of the Regulations, specifically Regulation 8(6)(a) of the Liquor Licence Act. It would appear that the policy of the

Licensee was not to have its staff require age of majority cards and that there was inadequate training of the dining lounge staff in this regard. It is also evident to the Tribunal that even a proper examination of the driver's licences of John Johnston and Mark Deskur would have indicated that they were both under age and that the waitress had made no attempt whatsoever to ask Jocelyn Deskur for evidence of age. It is well established that the Licensee must assume responsibility for the actions of its employees in complying with the Act and the Regulations in all its aspects. The Tribunal would also point out that Mr. Melehes acknowledged having been previously warned by the Board in 1981 of similar infractions, but apparently failed to heed the warning.

The Tribunal hereby confirms the Decision of the Liquor Licence Board dated the 5th day of May, 1983, and directs the Board to set the date of commencement and termination of the said period of suspension.



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